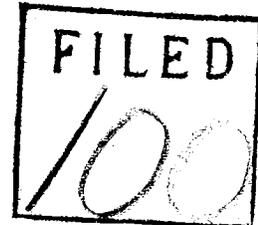


MOTOR VEHICLES;) May not display placard bearing words "License
) Applied for" as substitute for registration plates;
INFORMATION:) approved information for such violation.

June 24, 1941

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Honorable H. Parker York
Prosecuting Attorney
Schuyler County
Lancaster, Missouri

Dear Mr. York:

We are in receipt of your request for an opinion under date of June 20th, wherein you state as follows:

"On or about the first day of June of this year one Lowell Hill, a resident of the state of Iowa, was picked up by the Sheriff of my county for operating an automobile in Schuyler county without proper license plates, in this to-wit: Hill was a car dealer residing in Bloomfield, Ia. and was demonstrating a car to a prospective customer. Instead of a regular dealer's plate on his car Hill was displaying a cardboard placard bearing the words "License Applied For." As a matter of fact Hill had actually applied for metal dealer's license plates from the Motor Vehicle Dept. of Iowa and it seems that under the Iowa law such a cardboard placard was legal. It is my understanding of the Mo. law that while we extend full reciprocity to Iowa and other states on metal plates we do not recognize these cardboard placards whether legal in the foreign state or not. It is also my information that our patrol has been acting under this theory and that many arrests have been made in like cases. The reason I am bringing this seemingly trivial matter to your attention is that Hill appeared here yesterday

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with two Iowa lawyers and indicated his intention of fighting the case and possibly making a test case of it. If this is to happen I just want to be sure what your office wants me to do. Am I proceeding correctly and has Hill violated any law? I do not have the Iowa statutes in my office and do not know what if any reciprocity agreement we have with them. I am enclosing a copy of the information on file in this case for your opinion. It was drawn rather hastily as no contest was anticipated at the time. Would you suggest any changes. Should it charge instead that the defendant was operating his car with a placard bearing "License Applied For" as mentioned in subdivision (e) of Sec. 8377, R. S. 1939."

In answer to your request we are enclosing copy of an opinion rendered by this office to Colonel B. M. Casteel, under date of August 21, 1939, wherein the following conclusion was reached:

"It is, therefore, the opinion of this department that a non-resident owner of a motor vehicle must display number plates of the place of which he is a resident upon his vehicle in order to be exempt from registering such vehicle in Missouri.

"A receipt for registration alone from the state in which the car is registered is not sufficient for valid operation in the state of Missouri."

The above opinion dealt with a resident of Illinois, the latter state giving "full reciprocity" to Missouri, Iowa also has "full reciprocity" with Missouri. But under our

reciprocity statute (Section 8375, R. S. Mo. 1939) the non-resident owner must at all times when operating a motor vehicle in this state have "displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner. * * *"

Thus, even though Missouri may have full reciprocity with Iowa, under our reciprocity statute it is still necessary that a non-resident owner of a motor vehicle display the number plates of the state of which he is a resident in order to bring himself within the statute exempting non-residents from the Missouri motor vehicle laws.

In addition Section 8377, sub-section (e) R. S. Mo., 1939, specifically prohibits the display of a placard bearing the words "License Applied For" as follows:

"No person shall operate a motor vehicle or trailer on which there is displayed on the front or rear thereof any other plate, tag or placard bearing any number except the plate furnished by the commissioner or the placard herein authorized, and the official license tag of any municipality of this state, nor shall there be displayed on any motor vehicle or trailer a placard, sign or tag bearing the words 'license lost', 'license applied for', or words of similar import, as a substitute for such number plates or such placard."

Section 8404, sub-section (d), R. S. Mo. 1939, provides penalties for violation of the above sections:

"Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

From the foregoing we are of the opinion that a non-resident owner violates the laws of this State when he operates a motor vehicle in this State displaying a placard, sign or tag bearing the words "License Applied For" as a substitute for the number plates of the state of which he is a resident.

You enclosed copy of the misdemeanor charge you filed against the resident of Iowa for operating a car in this state by displaying a placard bearing the words "License Applied For," and request our opinion as to its sufficiency. The charge, omitting caption and verification, reads as follows:

"H. Parker York, Prosecuting Attorney within and for the County of Schuyler in the State of Missouri, under his oath of office informs the Court that Lowell Hill, late of the County and State aforesaid, on or about the 1st day of June A. D. 1941 in Liberty Township, in the County of Schuyler and State of Missouri, did then and there willfully and unlawfully operate and drive a motor vehicle, to-wit, an automobile, upon the public highway without any registration plates being attached either to the rear or front of said automobile, Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State.

H. Parker York
Prosecuting Attorney."

In the case of State v. Hass, 82 S. W. (2d) 621, the Kansas City Court of Appeals had before it for consideration the sufficiency of the following information:

"State of Missouri County of Worth SS:

"In the Circuit Court of Worth County Missouri, November Term, A. D. 1933.

"J. Dorr Ewing, Prosecuting Attorney within and for the County of Worth and State of Missouri, being first duly sworn, on his oath informs the court that at the County of Worth and State of Missouri, on the 2nd day of November, A. D. 1933, one Harold Hass did wrongfully, wilfully and unlawfully drive and operate an automobile, to-wit: One Model "T" Ford Car on the roads and highways of the State of Missouri without having at said time upon the front and rear thereof license plates issued by the Secretary of State of the State of Missouri for the year 1933; against the peace and dignity of the State."

The court, holding the above information insufficient, said:

"It is a well-known fact that many automobiles, none of which carry a 'license plate issued by the secretary of state of the State of Missouri,' are lawfully operated daily upon the highways of Missouri. From aught that is charged in the information, in the instant case, the automobile operated by the defendant was one of such lawfully operated automobiles. The information failed to charge that the automobile operated by the defendant was subject to the jurisdiction of the law of Missouri. It is essential to the validity of an information that every element constituting a crime must be directly and specifically stated, leaving nothing to intendment. State v. Hall, 130 Mo. App. 170, 108 S. W. 1077; State v. Hoffman (Mo. Sup.) 297 S. W. 388; State v. McFadden, 151 Mo. App. 479, 132 S. W. 267."

The apparent error in the above information was the oversight by the Prosecuting Attorney that automobiles may be operated in this state with license plates other than "license plates issued by the Secretary of State of the State of Missouri."

Section 8377, sub-section (e), prohibits the operation of a motor vehicle without license plates and the display of a placard on a motor vehicle bearing the words "License Applied For." Thus, in the same statute we have two acts forbidden which are not repugnant or inconsistent, stated in the disjunctive for which but one punishment is provided (Section 8404, sub-section (d), supra). Inasmuch, however, as these acts may be said to be separate and distinct in nature we do not believe that they can be charged conjunctively in one count.

A statement of the rule is found in the case of Miller v. Gerk, 27 S. W. (2d) 444, l. c. 445, wherein the court said:

"This conclusion is reached in the light of the general rule that where, as here, a statute forbids the commission of several acts, disjunctively specified, for which but one punishment is provided, and such acts are not repugnant or inconsistent, or wholly separate and distinct in their nature, two or more, or in fact all, of such forbidden acts, if committed in one transaction, may be charged conjunctively in one count of the indictment or information, and it will not be bad for duplicity."

We believe that the charge could be properly set up in two counts but if required to elect we see no advantage in drawing it in said fashion.

Based on the facts as submitted herein, omitting caption and verification, the following charge should be sufficient:

H. Parker York, Prosecuting Attorney within and for the County of Schuyler in the State of Missouri, under his oath of office informs the Court that Lowell Hill, late of the County and State aforesaid, on or about the 1st day of June, 1941, in Liberty Township, in the County of Schuyler and State of Missouri, did then and there willfully and unlawfully operate and drive a motor vehicle, to-wit, an automobile upon the public highways of the State of Missouri, without having at said time displayed upon the front and rear thereof any registration plates, Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State.

H. Parker York,
Prosecuting Attorney.

We are of the opinion that the above information is sufficient in both form and substance and properly charges the offense of driving a motor vehicle in this state with a placard bearing the words "License Applied For."

Respectfully submitted

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

MW:EG
Enc.